AFR

Court No. - 19

Case :- WRIT - A No. - 19308 of 2022

Petitioner :- Mahesh Chandra(Mahesh Singh)

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Sudhir Singh Chauhan,Ashutosh Vishwakarma

Counsel for Respondent :- C.S.C.

Hon'ble Jaspreet Singh,J.

1. Heard Sri Sudhir Singh Chauhan, learned counsel for the petitioner as well as Sri Shrawan Kumar Dubey, learned Additional Chief Standing Counsel for the State-respondents.

2. The learned counsel for the petitioner has also filed a supplementary affidavit today after serving a copy on the learned counsel for the State-respondents and the same is taken on record.

3. By means of the instant petition, the petitioner prays for the following reliefs which reads as under:-

> *"(I) Issue a writ, order or direction in the nature of Certiorari to quash/set-aside the impugned order/letter No. Sa-96/2021 dated 31.01.2022 issued by the respondent no. 3 i.e. Superintendent of Police Orai at District Jalaun.*
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> *(II) Issue a writ, order or direction in the nature of mandamus commanding and directing to the respondents to pay/allow the gratuity with interest to the petitioner."*

4. The petitioner has approached this Court assailing the order dated 31.01.2022 whereby the gratuity of the petitioner has been withheld on the ground of pendency of a criminal case against the petitioner. The submission of learned counsel for the petitioner is that the petitioner was appointed on the post of Constable on 01.02.1982 by the Superintendent of Police, Fatehgarh, District Farrukhabad. The petitioner after

completing a service of 39 years 11 months and 23 days has retired on 31.01.2022. It is also the case of the petitioner that during his service tenure, he was awarded with cash rewards and was also appreciated for his services and no case for any embezzlement or causing harm or loss to the Government was initiated or is pending against the petitioner, during his entire service tenure.

6. It is the contention of the learned counsel for the petitioner that a case bearing No. 207 of 2005 came to be lodged against the petitioner on 29.06.2005 under Sections 307/332/333/504/506/120-B I.P.C. in respect of an alleged incident which occurred on 29.06.2005. It is urged that the said case is still pending and on account of the said pendency, the gratuity of the petitioner has been withheld. It is also urged that the petitioner has been falsely implicated, inasmuch as, on the alleged date of the incident, i.e. on 29.06.2005, the petitioner was on duty and was not at the alleged site of the incident and to buttress the aforesaid submissions, he has also brought on record the documents in the shape of Annexure Nos. 1 and 2 with the writ petition.

7. By drawing the attention of the Court to the supplementary affidavit indicating the anomalies in the trial of Case No. 207 of 2005, it is urged that the petitioner has been falsely implicated and there is no fault of the petitioner despite the same the matter is pending since more than 16 years and the aforesaid information was always available with the police department, yet, no departmental inquiry was initiated against the petitioner on this count till retirement.

8. It is also urged that there is no justification for withholding the gratuity of the petitioner especially when the Authorities themselves did not find that the petitioner was guilty of any serious offence or crime nor the alleged case no. 207 of 2005 prompted the respondent-authorities to institute any departmental proceedings against the petitioner and now

when that he has retired, it is not lawful for the respondents to have withheld the gratuity which is against the settled legal principles as enunciated by a Full Bench decision of this Court in the Case of ***Shiv Gopal and Others Vs. State of U.P. 2019 (5) ADJ (441) (FB).*** The learned counsel for the petitioner also relies upon a decision in the case of ***Uday Narayan Ojha Vs. State of U.P. and others; 2020 (6) AWC 5502.*** and ***Devendra Kumar Sharma Vs. State of U.P. and 4 others; 2021 (0) Supreme 1154 Allahabad.***

9. On the strength of the aforesaid decisions, it is urged that the impugned order dated 31.01.2022 whereby the gratuity has been withheld is bad and as such a direction be issued to release the withheld gratuity to the petitioner expeditiously along with interest after setting aside the impugned order.

10. The learned Additional Chief Standing Counsel on the basis of written instructions submits that on account of pendency of the criminal case, the gratuity has been withheld. It is urged that there is no error or jurisdictional error committed by the Authorities in withholding the gratuity and as such the writ petition is not maintainable and deserves to be dismissed.

11. The Court has considered the submissions and also perused the material available on record.

12. It is not disputed that the petitioner had joined the services in the year 1982 and had attained the age of superannuation on 31.01.2022. It is also not disputed that no departmental inquiry was pending against the petitioner in his entire service tenure. It is also not disputed that the petitioner is also not guilty of any act of omission or commission whereby there has been any loss to the Government. The solitary ground upon which the gratuity of the petitioner has been withheld is the pendency of the criminal case no. 207 of 2005.

14. In order to ascertain the veracity as well as the justification for withholding the gratuity of the petitioner only on the ground of pendency of the criminal case, it will be necessary to examine the issue in light of the full bench decision of tIn ***Union of India and others Vs. S.L. Abbas; 1993 (4) SCC 351*** wherein the Apex Court held as under:-his Court in the case of **Shiv Gopal (supra)** and the relevant portion thereof reads as under:-.

> *"31. On plain reading, Article 351 confers power upon the State Government of withholding or withdrawing pension or any part of it, if the pensioner be convicted of 'serious crime' or be guilty of grave misconduct. In other words the State Government can withhold or withdraw pension on two grounds: (i) convicted of serious crime; (ii) guilty of grave misconduct; but not otherwise. In other words mere pendency of criminal case or disciplinary proceedings is not sufficient to withhold/or withdraw pension under Article 351.*
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> *39. The expression 'serious crime' has to be understood in the context of service jurisprudence involving the government servant. It may be any act of ommission which in the opinion of the competent authority is serious enough and calls for punitive action in terms of Article 351. It has no bearing with the quantum of sentence but with the nature of the offence and the degree of involvement of the government servant in the commission/omission of the crime.*
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> *40. Article 351-A empowers the Governor to withhold or withdraw pension or a part of it permanently or for specified period and order recovery from pension for pecuniary loss caused to the Government if the pensioner in departmental proceedings or in judicial proceedings, has been found: (i) guilty of grave misconduct or (ii) to have caused pecuniary loss to Government by misconduct or negligence during his service. The proviso to the Article spells out the circumstances/conditions in which the departmental proceedings/judicial proceedings is required to be instituted for the purposes of withholding/withdrawing pension. Article 351-A reads thus:*
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> *"351-A21. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to*

Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement: Provided that-

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during reemployment-

(i) shall not be instituted save with the sanction of the Governor. (ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Public Service Commission, U.P. shall be consulted before final orders are passed.

[Provided further that of the order passed by the Governor relates to a cash dealt with under the Uttar Pradesh Disciplinary Proceedings, (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission].

Explanation-For the purposes of this article-

(a) Departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to have been instituted:

(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court ; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to Civil court

Note- As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned."

41. Explanation to Article 351-A clarifies that departmental proceedings shall be deemed to have been instituted: (i) when charges are framed against the pensioner; or (ii) the officer has been placed under suspension from such date. Further, judicial proceedings is deemed to have been instituted against the pensioner: (i) in the case of criminal proceedings, on date on which complaint is made or charge-

sheet is submitted to a criminal court; (ii) in case of civil proceedings on the date on which plaint is presented or as the case may be, an application is made to Civil Court.

42. Now we will refer to the proviso to Article 351-A. The proviso speaks about initiation of disciplinary proceedings or judicial proceedings against the government servant after retirement. For initiating proceedings the conditions specified therein must be satisfied, that is, departmental proceedings as indicated in proviso (a) if not instituted while the officer was on duty then it shall not be instituted except:

(i). with the sanction of the Governor;

(ii). it shall be initiated on an event which took place not more than 4 years before the institution of the proceedings;

(iii). such proceedings would be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

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48. On joint reading of Article 351 and 351-A of the Civil Service Regulations clearly indicates that the State Government/Governor reserves to itself the power and right to withhold or withdraw pension or part thereof, whether permanently or for specified period or to order recovery from pension of the whole or part of any pecuniary loss caused to the government in the following eventualities:-

i. pensioner be convicted of serious crime;

ii. pensioner be guilty of grave misconduct;

iii. pensioner having caused pecuniary loss to the government by misconduct or negligence, during service including service rendered on reemployment after retirement;

iv. The power under Article 351 and 351-A can be invoked by the Governor/State Government upon conclusion of disciplinary/judicial proceedings and not at the inception of the proceedings. In other words, the condition precedent for exercise of power under these Articles is on conclusion of the proceedings and order being passed thereon by the competent authority.

Article 351-AA/Article 919-A:

49. Article 351-AA came to be incorporated entitling provisional pension as against full pension (commutation of pension) to government servant against whom departmental or judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement, such

government servant may be sanctioned provisional pension as provided in Article 919-A.

50. Article 351-AA reads thus:

"[351-AA25. In the case of a Government Servant who retires on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement a provisional pension as provided in Article 919-A may be sanctioned."

51. On plain reading of Article 351-AA, it transpires that in the eventuality of proceedings/enquiry, referred therein, is pending against a government servant on the date of superannuation, the government servant shall be entitled to provisional pension. In other words, pendency of departmental/judicial proceedings or any enquiry or enquiry to be instituted after retirement would not empower the State Government to withhold pension, but the government servant may be sanctioned provisional pension, computed as per Rules. It follows that the full pension has to be computed on conclusion of the proceedings/enquiry as the case may be."

15. From the perusal of the aforesaid paragraphs, it would be relevant to note that in order for the Authorities to withhold the gratuity of the petitioner, it would be imperative to record that the pensioner would be guilty or is under trial for a serious crime. It will be necessary for the Authorities to apply its mind to see whether the nature of the crime in which the pensioner is involved comes within the ambit of the serious crime or not. While entering into the aforesaid aspect of the matter, the Competent Authority must also bear in the mind whether the complaint or charge sheet against the petitioner was filed during the service period and if the allegations in the charge sheet against the petitioner falls within the ambit of a serious offence which is unbecoming of a government servant, then how and in what contingency, the pensioner was allowed to continue in employment even though the Department knew of the pendency of the criminal case against the pensioner and whether in such circumstances, it would be appropriate to withhold the gratuity of the pensioner on the ground of the pendency of the criminal case.

16. It is in view of the aforesaid, if the facts of the instant case are seen, it would be noticed that the petitioner had joined the services in the year 1982 and he superannuated on 31.01.2022 after putting in a service of more than 39 years, 11 months and 23 days.

17. It is not the case of the respondents that the Department was not aware of the said criminal case bearing No. 207 of 2005 pending against the petitioner. It is also not disputed by the respondents that the charge sheet in the said case was filed in the year 2006 and the matter is still engaging the attention of the Court concerned. Whether any reasonable case is made out is for the Court concerned to look into the matter but at the same time, after more than 16 years of the institution of the said case and where the petitioner has superannuated on 31.01.2022, it had to be considered objectively by the Authorities as to whether there is reasonable material to arrive at a finding that the petitioner is somewhat involved in a serious crime. In case if it was so then under what circumstances, the petitioner was allowed to continue in service without any departmental proceedings, are all relevant issues, which ought to have been considered but unfortunately this aspect of the matter has not been considered by the Authority.

18. A coordinate Bench of this Court in the case of ***Devendra Kumar Sharma (supra)*** has noticed the aforesaid aspect in the following paragraphs which reads as under:-

> *"21. Thus, from the aforesaid deliberation, it is evident that to withhold the full pension or any part of pension, the crime of which the pensioner is charged must be a 'serious crime'. If the crime alleged against the pensioner, does not fall within the ambit of 'serious crime', the Governor or the State Government cannot withhold the pension or any part of it or gratuity of the pensioner.*
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> *22. Though, the Full Bench has held in para nos.-66 to 69 of the judgment that the cause of action to the pensioner would arise after the order is passed by the competent authority upon conclusion of the proceedings and findings returned thereon, but the Full Bench in para no.31 of the judgment has observed that mere pendency of criminal*

case or disciplinary proceedings is not sufficient to withhold or withdraw pension under Article 351 of Civil Service Regulations.

23. Further, in para no. 39 of the judgment it has been observed that the expression 'serious crime' in the context of service jurisprudence involving the government servant refers to any act or omission which in the opinion of the competent authority is serious enough and calls for punitive action in terms of Article 351. It further holds that the quantum of sentence is not relevant but the nature of the offence and the degree of involvement of the government servant in the commission or omission of the crime is relevant.

24. Since, the Full Bench in para no.31 of the judgment has held that mere pendency of criminal case or disciplinary proceedings is not sufficient to withhold or withdraw pension under Article 351 of the Civil Service Regulations and further elaborated expression 'serious crime' in para no.39 of the judgment, therefore, from the conjoint reading of the aforesaid two paragraphs of the judgment, it can be safely culled out that the competent authority while withholding the gratuity and pension of the pensioner should apply its mind to see whether the nature of crime in which the pensioner is involved comes within the ambit of 'serious crime' or not. In doing so, the competent authority must also bear in mind that whether the complaint and charge sheet against the pensioner was filed during the service period, and if the allegations in the complaint and charges against the petitioner fall within the ambit of 'serious offence' which is unbecoming of a Government Servant, then how and in what contingency, the pensioner was allowed to continue in employment even though the department knew of the pendency of criminal case against the pensioner, and whether in such circumstances, it would be appropriate to withhold gratuity and pension of the pensioner on the ground of pendency of criminal case against him.

25. Once, the competent authority on the subjective satisfaction of the case holds in the light of paragraph nos. 31 & 39 of the full Bench Judgment and observation made above that the crime which is alleged against the pensioner falls within the ambit of 'serious crime', the opinion of the competent authority would be final and the pensioner has to wait till the conclusion of disciplinary or judicial proceeding, and the Court should constraint to interfere with the finding of the competent authority unless the finding is without application of mind or is based on irrelevant considerations or is perverse or is otherwise not sustainable in law.

26. Now, coming to the facts of this case, the competent authority had knowledge about the filing of charge sheet against the petitioner in the criminal case on 02.02.2011, and the petitioner was allowed to continue in service thereafter for about 09 years till retirement i.e.

31.12.2020; yet it passed only one-line order that "10% gratuity and final pension of the petitioner is withheld due to pendency of criminal case". The impugned order does not reflect any application of mind by the competent authority nor there is any finding that the offence alleged against the petitioner falls within the category of 'serious crime' to entitle it to invoke the power under Article 351 of Civil Service Regulations.

27. This Court in normal circumstances would have remanded the matter to the competent authority, but considering the fact that the charge sheet in the criminal case had been filed on 02.02.2011 and the petitioner was allowed to continue in service thereafter about 09 years till retirement, i.e, 31.12.2020, therefore, this Court believes that the competent authority was of the opinion that the nature of crime in which the petitioner has been charge-sheeted is not 'Serious Offence' so as to warrant any disciplinary proceeding against the petitioner, and accordingly, he was allowed to continue in service uninterruptedly till retirement. Therefore, in view of paragraph-31 of the Full Bench judgment of this Court in the case of Shivagopal & others (supra), this Court believes that the order impugned is not sustainable and is, accordingly, set aside with the direction to the respondents to release 10% unpaid gratuity and fix and pay final pension including arrears to the petitioner within three months from the date of production of a certified copy of this order. "

19. Even in ***Uday Narayan Ojha (supra)***, this aspect has been considered in the following paragraphs which reads as under:

"8. The power of State to withhold pension and gratuity, therefore, must be exercised strictly as per the applicable law and if the State action is not found to be in consonance with it, the withholding of gratuity would violate Article 300-A of the Constitution of India. The denial of such constitutional right, therefore, would be liable to be interfered with by this Court under Article 226 of the Constitution of India.

9. Even otherwise, the period of 4 years is a reasonable period from the date of the event, leading to submission of charge-sheet and the employee cannot be made to suffer for any un-explained or undue delay on the part of the State or the investigating agency. It is, otherwise, not shown by the respondents that such delay was attributed to any act or omission on part of the petitioner. The right of State to proceed in accordance with law, is otherwise available by virtue of Article 351 of Civil Services Regulations if the charges are found proved in judicial proceedings and the public interest also would not be adversely affected, if the gratuity due is paid to the government servant. In view of the above discussions, this Court has no hesitation

> *in holding that action of respondents in withholding payment of gratuity to petitioner is wholly illegal, arbitrary and cannot be sustained.*
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> *10. Writ petition succeeds and is allowed. The order dated 28.1.2012 passed by the respondent no. 3, so far as it relates withholding of gratuity payable to petitioner is concerned, is set aside. A writ of mandamus is issued to the respondents to forthwith release the withheld amount of gratuity together with 6% interest. In case the amount is not paid within four months from today, the petitioner shall be entitled to enhanced rate of interest at the rate of 8% per annum, and it shall be open for the authorities of the State to realise the additional interest from the salary of the officer found responsible for not ensuring release of gratuity to petitioner in terms of this order. .."*

20. In light of the aforesaid and in view of the fact that from the perusal of the impugned order, the gratuity which has been withheld is only on account of the pendency of the criminal case and it does not indicate that there is any serious deliberation regarding the fact as to whether the petitioner was involved in a serious crime and the aspects which have been noted above especially in light of the Full Bench Decision of ***Shiv Gopal (supra), Devendra Kumar Sharma (supra)*** and ***Uday Narayan Ojha (supra)*** which have been reproduced hereinabove. The impugned order is apparently non-speaking and does not reflect any application of judicial mind. It was incumbent upon the Authorities to pass appropriate orders only taking into consideration the law laid down by this Court in the case of Shiv Gopal (supra).

21. Apparently, the Authorities have not applied their judicial mind nor have considered the case of the petitioner in light of the dictum of the full bench decision, accordingly, in the aforesaid circumstances, the impugned order in so far as it relates to withholding the gratuity of the petitioner is not sustainable.

22. In the aforesaid circumstances, the matter is remitted to the Authority concerned and the petitioner is permitted to file a detailed representation alongwith a copy of this judgment within two weeks raising the issue before the Authority concerned who shall consider the

said representation and pass a reasoned and speaking order taking note of the decision of this Court in the case of Shiv Gopal (supra) as well as the observations made in this judgment. The decision shall be taken by the Authorities concerned within a period of four weeks and it shall be communicated to the petitioner.

23. The writ petition is allowed in the aforesaid terms. In the facts and circumstances, there shall be no order as to costs.

(Jaspreet Singh, J.)

Order Date:- 20.01.2023

Asheesh

Digitally signed by :-
ASHEESH KUMAR
High Court of Judicature at Allahabad